

Title	Appellate Procedure – Consecutive Pagination of Supporting Documents to Capital Habeas Corpus Petitions Filed by Attorneys (amend Cal. Rules of Court, rules 56(i) and 56.5)
Summary	These proposed amendments to rules 56(i) and 56.5 of the California Rules of Court would clarify that supporting documents to habeas corpus petitions filed by attorneys must be consecutively paginated.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 56(d) of the California Rules of Court provides that documents submitted in support of a petition in a reviewing court shall be “bound together at the end of the petition or in separate volumes not to exceed 300 pages each, with consecutive pagination throughout.” However, rule 56(i) provides that “[T]he provisions of this rule shall not apply to applications for a writ of habeas corpus. . . .” Thus, the consecutive pagination requirements of rule 56(d) do not currently apply in these proceedings, and no other rule currently establishes such requirements.</p> <p>In capital cases, the Supreme Court often receives habeas corpus petitions with multiple volumes of supporting exhibits. When the pages of these exhibits are not consecutively paginated, it is very difficult for the court to identify and cite pages in these supporting documents.</p> <p>While it might be difficult for a self-represented litigant who files an application for a writ of habeas corpus to comply with the consecutive pagination requirements applicable to other petitions, there does not appear to be any reason that attorneys filing these applications cannot follow the same pagination requirements for supporting documents accompanying habeas corpus petitions as they would follow with other petitions. The committee is therefore proposing that rules 56 and 56.5 be amended to clarify that when a petition for a writ of habeas corpus is filed by an attorney supporting documents accompanying that petition must be consecutively paginated. The committee is also proposing that descriptive headings be added to subdivisions (a) and (b) and that other minor clarifying changes be made.</p>
	Attachments

Rules 56(i) and 56.5 of the California Rules of Court would be amended effective January 1, 2004, to read:

**Rule 56. Original proceedings**

**(a)–(h) \* \* \***

**(i) [Proceedings not covered by this rule]** The provisions of this rule shall not apply to applications for a writ of habeas corpus, except as provided in rule 56.5, or to petitions for review pursuant to rules 57, 58, and 59.

**(j)–(k) \* \* \***

**Rule 56.5. Original proceedings seeking release or modification of custody**

**(a) [Use of Judicial Council form required]** A petition to a reviewing court for a writ of habeas corpus, or for any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this State in a State or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form adopted by the Judicial Council. Any such petition is exempt from the provisions of rule 56 relating to form and content of a petition and requiring a petition to be accompanied by points and authorities.

**(b) [Exception for good cause]** For good cause the court may permit the filing of a petition that does not comply with the provisions of subdivision (a) of this rule.

**(c) [Petitions filed by attorneys]** If the petition is filed by an attorney:

(1) The petition need not be on the form specified in (a) but must contain the pertinent information specified in that form and must comply with the requirements of rule 14(a) and (b);

(2) If the petition is accompanied by a memorandum of points and authorities, the memorandum must comply with the requirements of rule 14(a) and (b); ~~and~~

(3) The petition must be accompanied by a lodged copy of any related petition (excluding exhibits) previously filed in any lower state court, or in any federal court, pertaining to the same judgment and petitioner. If such documents have previously been lodged with the Supreme Court, the petition need only so state; and

40                    (4) Any supporting documents accompanying the petition must comply with  
41                    the requirements of rule 56(d).

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43                    **(d) \* \* \***